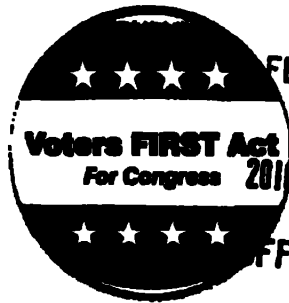


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OFFICE OF GENERAL
COUNSEL

April 22, 2010

Ms. Thomasenia Duncan, Esq.
General Counsel
Federal Election Commission
999 M Street NW
Washington DC 20463

RE: Complaint against Congressman Howard Berman

MUR # 6280

Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 437g(a)(1), Voters FIRST Act for Congress¹ ("Voters FIRST") hereby files a complaint against Congressman Howard L. Berman. Mr. Berman is a Member of the United States House of Representatives and a candidate for the United States House of Representatives in California's 28th congressional district in California's June 8, 2010 primary and the November 2, 2010 general election.

The actions of Mr. Berman in establishing, financing, maintaining and controlling a soft money ballot initiative committee violate federal statutes and regulations, particularly if he is, as he plans, a candidate for reelection on the same November 2 ballot upon which his initiative will appear.

Summary

Published media reports indicate that Representative Berman has taken actions to "establish, finance, maintain or control" a California soft money committee, a violation of 2 U.S.C. § 441i(e)(1)(A) and (B) and 11 C.F.R. §§ 300.61, 300.62, which can constitute a felony under the Bipartisan Campaign Reform Act of 2002 (BCRA). The "Yes on FAIR" Committee, according to its reports filed with the California Secretary of State, has raised significant contributions from both sources and in amounts that are prohibited by the Federal Election Campaign Act, 2 U.S.C. § 431 et seq., as amended by the Bipartisan Campaign Reform Act ("McCain-Feingold").

In order to ensure that the integrity of McCain-Feingold is preserved, the Commission must immediately investigate Rep. Berman and the soft money contributors to this soft money committee about their conversations with Rep. Berman and what they have been told by him and others that their contributions will achieve.

¹ Voters FIRST is the committee formed to qualify a ballot initiative to require the independent Citizens Redistricting Commission to draw congressional district lines instead of them being drawn by the California legislature. See <http://www.sos.ca.gov/elections/ballot-measures/pending-signature-verification.htm>.

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Facts

"Yes on FAIR, a coalition of working people, Karen Bass, and other community leaders devoted to eliminating bureaucratic waste of taxpayer dollars on the political game of redistricting" ("Yes on FAIR"), is the committee formed to qualify the "Repeal Proposition 11" ballot initiative for the November 2010 general election in California. It is still in the signature-gathering stage.² In addition to the treasurer, UCLA Law School Professor Daniel Lowenstein is the only person listed as a principal officer on the Yes on FAIR Committee's Statement of Organization filed with the California Secretary of State.³

Mr. Lowenstein publicly acknowledged in published media reports that the "real sponsors [of Repeal Proposition 11] are Democratic congressmen, led by Howard Berman, and Berman's brother, Michael, the Democrats' top redistricting expert. 'It's Michael and Howard together,' Lowenstein said."⁴ Neither Representative Berman nor Prof. Lowenstein has denied those reports.

As further evidence of Representative Berman's control of Yes on FAIR, on March 5, 2010 Charles T. Munger, Jr. spoke on the telephone for 60-90 minutes with Rep. Berman. The agenda for this call was exploring a possible legislative solution pursuant to which Mr. Munger, the proponent of the Voters First Act for Congress (VFA), would agree not to file the necessary signatures, then in hand, to qualify the VFA, while the campaign to gather signatures for the FAIR measure would cease, and all parties would undertake to support a potential compromise measure to be approved by the California Legislature.

Representative Berman's control of Yes on FAIR also violates the federal election laws because many of the committee's contributions are in excess of the \$5,000 contribution limit and violate the source prohibitions of the FECA. Representative Berman's committee lists among its contributions, as reported to the FPPC:⁵

HAIM SABAN	\$2,000,000.00	4/9/2010
AFSCME	\$250,000.00	3/22/2010
CALIFORNIA 2020 SENATOR ALEX PADILLA'S BALLOT MEASURE COMMITTEE	\$10,000.00	3/29/2010
BOB BLUMENFELD FOR ASSEMBLY 2010 STRENGTHENING CALIFORNIA THROUGH LEADERSHIP	\$10,000.00	3/29/2010
I. B. E. W. EDUCATIONAL COMMITTEE	\$30,000.00	3/8/2010
FRIENDS OF LOIS CARPS	\$50,000.00	3/8/2010
PADILLA FOR SENATE	\$10,000.00	3/2/2010
FRIENDS OF FAIR	\$15,000.00	2/22/2010
	\$10,000.00	2/11/2010

² Attachment A, also available at <http://www.sos.ca.gov/elections/ballot-measures/closed-for-circulation.htm>. Proposition 11 was a successful 2008 California ballot initiative that created the Citizens Redistricting Commission to draw state legislative district lines. Rep. Berman's committee seeks both to disqualify Proposition 11 and to defeat a separate initiative that would transfer the power to the same Citizens Redistricting Commission to draw the congressional districts in 2011, including those of Rep. Berman and the other Representatives.

³ Attachment B, also available at <http://cal-access.sos.ca.gov/PDFGen/pdfgen.ppt?fileid=1468638&amend=4>.

⁴ Attachment C (Dan Walters, *Both fight loss as California redistricting Sacramento race* (Jan. 18, 2010), available at <http://www.sacbee.com/2010/01/18/2469325/dan-walters-ballot-fight-loom.html>; see also John Marcian, *Thousands apply for state redistricting panel*, [SignOnSanDiego.com](http://www.signonsandiego.com/news/2010/jan/25/thousands-apply-redistricting-panel) (Jan. 25, 2010), available at <http://www.signonsandiego.com/news/2010/jan/25/thousands-apply-redistricting-panel>.

⁵ Available at <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1323672&view=intr1>.

Conclusion

The Commission should, therefore, find reason to believe that Congressman Howard Berman violated 2 U.S.C. § 441i(e)(1) and the FEC's implementing regulations and immediately commence an investigation.

Sincerely,

Charles T. Munger, Jr.
Charles T. Munger, Jr.

SWORN TO AND SUBSCRIBED before me this _____ day of April, 2010.

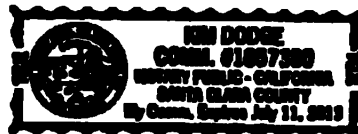
See notarial certificate below

Notary Public

My Commission Expires: _____

SEAL

State of California, County of Santa Clara
Subscribed and sworn to (or affirmed) before me
on this 22nd day of April, 2010
by Charles T. Munger, Jr.
personally known to me or proved to me on the
basis of satisfactory evidence to be the person(s)
who appeared before me.
Signature: Jim Dodge



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2

Statement of Organization Recipient Committee

Type or print in ink

STATEMENT OF ORGANIZATION

410

For Office Use only

Page 1

Statement Type

☐ Initial
☐ Not yet qualified ☐ or

☒ Amendment
List ID, number: 1329572

☐ Termination - See Part 5
List ID, number:

Date qualified as committee

\$ 2/2/2010

Date of Termination

1. Committee Information

NAME OF COMMITTEE
Yes on PAID, a coalition of entrepreneurs, working people, Karen Bass, and other community leaders devoted to eliminating bureaucratic waste of taxpayer dollars on the political game of reelecting

2. Treasurer and Other Principal Officers

NAME OF TREASURER

Freddie D. Woodner

STREET ADDRESS

STREET ADDRESS (NO P. O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE
Los Angeles CA 90024 (310) 576-1233

CITY STATE ZIP CODE AREA CODE/PHONE
Los Angeles CA 90024 (310) 576-1233

NAME OF ASSISTANT TREASURER, IF ANY

STREET ADDRESS

CITY STATE ZIP CODE AREA CODE/PHONE

MAILING ADDRESS (IF DIFFERENT)

OFFICIAL MAIL ADDRESS
(310) 576-1233

NAME AND POSITION OF OTHER PRINCIPAL OFFICERS, IF APPLICABLE
Daniel L. Woodner

COUNTY OF DOMICILE COUNTY WHERE COMMITTEE IS ACTIVE IF DIFFERENT
Los Angeles THEN COUNTY OF DOMICILE

MAILING ADDRESS

CITY STATE ZIP CODE AREA CODE/PHONE
Los Angeles CA 90024 (310) 576-1233

Additional information on appropriately labeled continuation sheets.

3. Verification

I have used all reasonable diligence in preparing this statement and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 04/07/2010 DATE

By Freddie Woodner

SIGNATURE OF TREASURER OR ASSISTANT TREASURER

Executed on 04/07/2010 DATE

By Daniel L. Woodner

SIGNATURE OF CONTROLLING OFFICER/CLERK, CANDIDATE, OR STATE RESIDUE PROPOSER

Executed on DATE

By

SIGNATURE OF CONTROLLING OFFICER/CLERK, CANDIDATE, OR STATE RESIDUE PROPOSER

Executed on DATE

By

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Statement of Organization Recipient Committee

INSTRUCTIONS ON REVERSE

COMMITTEE NAME

Yes on FAIR, a coalition of entrepreneurs, working people, Korea Baus, and other community leaders devoted to eliminating bureaucratic waste of taxpayer dollars on the political

Page 2

LD. NUMBER

1323672

STATEMENT OF ORGANIZATION
410

4. Type of Committee Complete the applicable sections.

- List the name of each controlling officer/holder, candidate, or state measure proponent. If candidate or officer/holder controlled, also list the elective office sought or held, and district number, if any, and the year of the election.
- List the political party with which each officer/holder or candidate is affiliated or check "non-partisan."
- If this committee acts jointly with another controlled committee, list the name and identification number of the other controlled committee.

NAME OF CANDIDATE/OFFICER/STATE MEASURE PROPONENT	ELECTIVE OFFICE SOUGHT OR HELD (INCLUDE DISTRICT NUMBER IF APPLICABLE)	YEAR OF ELECTION	PARTY
Daniel Lorenzola (proponent)	Example Of Held Not Significant	2010	<input type="checkbox"/> Non-Partisan <input type="checkbox"/> Non-Partisan

List the financial institution where the campaign bank account is located (controlled "candidate election" committees only)

NAME OF FINANCIAL INSTITUTION	AREA CODE/PHONE	BANK ACCOUNT NUMBER
ADDRESS	CITY	STATE ZIP CODE

Financially formed to support or oppose specific candidates or measures in a single election. List below:

CANDIDATE(S) NAME OR MEASURE(S) FULL TITLE (INCLUDE BALLOT NO. OR LETTER)	CANDIDATE(S) OFFICE SOUGHT OR HELD OR MEASURE(S) JURISDICTION (INCLUDING DISTRICT NO., CITY OR COUNTY, AS APPLICABLE)	CHECK ONE
Financial Accountability in Redistricting Act (no number yet)	Example	SUPPORT X OPPOSE
		SUPPORT OPPOSE

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FFRC Tabletop Helpdesk 800.847.7777

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**Statement of Organization
Recipient Committee**

INSTRUCTIONS ON REVERSE

COMMITTEE NAME

Yes on FAIR, a coalition of entrepreneurs, working people, Korea Bums, and other community leaders devoted to eliminating bureaucratic waste of taxpayer dollars on the political game

LD. NUMBER

Page 3

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STATEMENT OF ORGANIZATION

4. Type of Committee (Continued)

Not formed to support or oppose specific candidates or measures in a single election. Check only one box:
☐ CITY Committee ☐ COUNTY Committee ☐ STATE Committee

PROVIDE BRIEF DESCRIPTION OF ACTIVITY

Use additional sponsors on an attachment.

NAME OF SPONSOR

IDENTITY GROUP OR AFFILIATION OF SPONSOR

STREET ADDRESS

NO. AND STREET

CITY

STATE

ZIP CODE

☐ Check box and provide the date this committee qualified as a small contributor committee. If the committee qualified as a small contributor committee on January 1, 2001, enter 1/1/01.

5. Termination Requirements by signing the verification, the treasurer, assistant treasurer and/or candidate, officer/director, or proponent certify that all of the following conditions have been met:

- This committee has ceased to receive contributions and make expenditures;
 - This committee does not anticipate receiving contributions or making expenditure in the future;
 - This committee has eliminated or has no intention or ability to discharge all debts, loans received, and other obligations;
 - This committee has no surplus funds; and
 - This committee has filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.
- There are restrictions on the disposition of surplus campaign funds held by elected officers who are leaving office and by defeated candidates. Refer to Government Code Section 89519.
- Additional filing obligations will be incurred if, after terminating, the committee receives or spends any funds, or receives the forgiveness of a loan, repayments of loans made to others, or any other receipts.

Dan Walters: Ballot fights loom on California redistricting

dwalters@sacbee.com

Published Monday, Jan. 18, 2010

As the process of selecting an independent commission to redraw California's legislative districts gets under way, two rival groups are planning to ask voters to either eliminate the commission altogether or expand its reach into congressional districts as well. That could mean a very expensive political shootout later this year with national repercussions.

Charles T. Munger Jr., a wealthy Southern Californian whose father is billionaire financier Warren Buffett's partner, has already contributed more than \$2 million to qualify a ballot measure to expand independent redistricting to the state's congressional districts.

Given that level of financing, there's little doubt that the Munger measure will make the ballot. But there's a late-blooming rival that's been submitted to the attorney general's office that would erase Proposition 11, the 2008 ballot measure that created the independent commission, and return the power over drawing new districts after the 2010 census to the Legislature.

UCLA law professor Daniel Lowenstein, who wrote one of the briefest arguments against Proposition 11, is the ostensible author of the new proposal. But he acknowledges the real sponsors are Democratic congressmen, led by Howard Berman, and Berman's brother, Michael, the Democrats' top redistricting expert.

"It's Michael and Howard together," Lowenstein said.

Whether the Lowenstein-Berman measure can make it to the November ballot, however, is problematic. Once it gets its official title from the attorney general's office, proponents will have only two months to collect enough signatures to get it on the ballot. It could be done with a multimillion-dollar injection to hire professional signature gatherers, but timing will be tight.

Gov. Arnold Schwarzenegger and a coalition of political reform groups put Proposition 11 on the ballot, arguing that leaving redistricting in the hands of the Legislature is too self-serving.

They pointed to legislative redistricting after the 2008 census, which has been widely portrayed as a bipartisan gerrymander that fixed the party ownership of 120 legislative and 53 congressional districts and contributed to the Capitol's gridlock.

Schwarzenegger's group, however, excluded congressional districts from Proposition 11 because House Speaker Nancy Pelosi and other powerful members of the congressional delegation were threatening to spend many millions of dollars to oppose it.

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The outcome of the conflict between the Munger measure and the Lowenstein-Berman proposal could have national fallout, especially if Republicans make significant gains in this year's congressional elections.

If the Democratic-controlled Legislature redraws the state's congressional districts, it's believed as many as a half-dozen seats could be shifted from Republican to Democratic hands. But if a commission does it, the impact would be much less.

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Thousands apply for state redistricting panel

By John Marelius, UNION-TRIBUNE STAFF WRITER

Monday, January 25, 2010 at 12:04 a.m.

CITIZENS REDISTRICTING COMMISSION

Background: California voters approved Proposition 11 in November 2008 to take redistricting power away from the Legislature and give it to an independent commission.

Who will be on it? It will consist of five Democrats, five Republicans and four members of other parties or no party.

Who chooses them? The State Auditor's Office is overseeing the process.

Who's eligible? Applicants must have voted in at least two of the last three general elections and

must have been registered with the same party or no party for at least the past five years.

Who's not eligible? Anybody who has been a candidate for state or federal office, a lobbyist or contributed \$2,000 or more in any year to a political party or candidate. State appointees, political consultants, political staffers and party central committee members are also ineligible. Applicants also must pledge not to engage in any of those activities for 10 years.

How can people apply? Applications are available at WeDrawtheLines.ca.gov.

California's first-ever citizens commission to reshape legislative districts is beginning to take shape — its mission potentially complicated by two rival initiatives aimed for the November ballot.

One initiative would give the commission more work to do; the other would wipe it out before it even begins its work.

The 14-member Citizens Redistricting Commission will redraw the boundaries of state Senate, Assembly and Board of Equalization districts next year to make them as equal in population as possible after the 2010 census is completed.

The commission was mandated when voters approved Proposition 11 in November 2008 to take redistricting power away from the Legislature.

There has been an outpouring of interest in serving on the commission. As of Friday, more than 7,400 people submitted applications at WeDrawtheLines.ca.gov — and the deadline isn't until Feb. 12.

California State Auditor Elaine Howle, who was charged by Proposition 11 with overseeing the commission's creation, expressed concern that the pool of applicants disproportionately consists of older white males.

"While we are thrilled about the number of applications submitted since the opening of the application period on December 15, 2009, we're anxious to see diversity in the applicant pool that is reflective of the diversity in our great state," Howle said.

Critics of the previous system contended that there was an inherent conflict of interest in legislators drawing their own districts.

In 2001, districts were redrawn to the liking of incumbents of both parties, making them virtually immune to serious general election challenges. During the decade, only one congressional district in California changed parties — the 11th District in the Central Valley and East Bay Area suburbs.

Even so, political professionals say the notion that having an independent panel will greatly increase electoral competition is easily overblown.

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"Given the demographics of California, you could draw the fairest, most nonpartisan lines in the world and you're still not going to end up with a lot of competitive seats," said Democratic strategist Gary South, who supported Proposition 11.

Sponsors of Proposition 11 did not include redrawing congressional districts largely because House Speaker Nancy Pelosi, D-San Francisco, threatened to spend as much money as it took to defeat the initiative if it did.

Palo Alto physicist Charles Munger, who helped bankroll Proposition 11, is sponsoring an initiative that would add congressional districts to the commission's responsibilities.

In a midterm election year when congressional Democrats are expected to have dozens of seats to defend, it's unclear whether Pelosi will be in a position to spend freely to torpedo such an initiative.

"We don't know why elected officials would oppose a measure that districts be drawn fairly in an open and transparent process, but that remains to be seen," said Theresa Wheeler, who is coordinating Munger's petition drive.

In the past, legislators, preoccupied with redrawing their own districts, have tended to give the House delegation whatever it wants.

Some analysts doubt that will be the case in 2011.

"If I were a member of Congress, I wouldn't be as sanguine about 2011 as past redistrictings, because the Legislature is not going to have anything to distract it," said Tim Hodson, director of the Center for California Studies at California State University Sacramento.

Meanwhile, Rep. Howard Berman, D-North Hollywood, and his brother Michael Berman, architect of the much-criticized redistricting process in 2001, are behind an initiative that would undo Proposition 11 and give all redistricting responsibility back to the Legislature.

"It's better for redistricting to be done by the Legislature," said UCLA law professor David Lowenstein, who wrote the Berman initiative that is still early in the process.

"Redistricting is entirely a political matter, and there's one agency in California that is set up precisely for the purpose of resolving political matters, which is the Legislature, whose members are accountable to the voters in a political way."

The 14 members of the Citizens Redistricting Commission — five Democrats, five Republicans and four who are members of other parties or no party — will be chosen through a tough screening process.

Applicants must have voted in at least two of the last three general elections and have been registered with the same party or no party for at least five years.

They must meet exacting conflict-of-interest standards: They or their immediate family members in the past 10 years cannot have run for state or federal office, been a lobbyist, a political consultant, a political staff member, a state appointee or contributed \$2,000 or more to a candidate in any year. Commissioners must pledge not to do any of these things for the next 10 years.

The requirements strike some as excessive.

"I think it's ludicrous to say that nobody who ever rode on a bus with anybody who knows anything about this process can serve on this commission," Lowenstein said. "Usually, we want people who are knowledgeable."

Hodson is one of a relative handful of people in California with redistricting experience as the former chief consultant to a state Senate committee. He is also an appointee to the state's Fair Political Practices Commission, making him ineligible.

"I'm not eligible to serve because I'm a gubernatorial appointee," Hodson said. "My term at the FPPC is up in 2011, which means I'm not eligible in 2021, which will be almost 10 years after I was a state official and 27 years after I left the Legislature."

Douglas Johnson, a consulting fellow at the Rose Institute of State and Local Government at Cleveland McKenna College, has no problem with the standards.

"The goal is to exclude all the usual suspects in Sacramento," Johnson said. "Looking at California's history of redistricting, I'm not sure we want the decision-makers and technicians from past redistricting involved in this. From the perspective of good government, that's not a bad thing."

Find this article at:

<http://www.signonsandiego.com/news/2010/jan/25/thousands-apply-redistricting-panel>

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